

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Saint Mary Home and Teamsters Local 671. Case 34–CA–12130

November 28, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on September 15, 2008, the General Counsel issued the complaint on September 24, 2008, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 34–RC–2119. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Sections 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On October 21, 2008, the General Counsel filed a Motion for Summary Judgment and supporting memorandum. On October 23, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment¹

In its answer, the Respondent admits its refusal to bargain, but contests the validity of the Union’s certification on the basis of its contentions, raised and rejected in the underlying representation proceeding, that (1) the bargaining unit improperly includes statutory supervisors; (2) the unit has experienced substantial turnover and increase in size during more than 3 years since the election; and (3) the Regional Director should have ordered a second election instead of counting the impounded ballots.²

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

² The Respondent also argues that, before considering the instant Motion for Summary Judgment, the Board must rule on its (then-pending) request for review of the Regional Director’s Supplemental

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Connecticut corporation with an office located in West Hartford, Connecticut (its facility), has been engaged in the operation of a sub-acute, rehabilitative, and long-term skilled medical care facility.

During the 12-month period ending August 31, 2008, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$100,000 and purchased and received at its facility goods valued in excess of \$5000 directly from points outside the State of Connecticut.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act, and that Teamsters Local 671 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on May 9, 2005, the Union was certified on August 28, 2008, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Decision on Objections and Certification of Representative, as well as its request for review of the Regional Director’s denial of its “Objection to Counting of Ballots and Motion for Second Election” (which the Board treated as a request for special permission to appeal). On November 6, 2008, the Board issued an unpublished Order denying these requests for review. Thus, the issues raised by the Respondent’s argument in this regard are moot. Moreover, “it is well established that an employer is not relieved of its obligation to bargain with a certified representative pending Board consideration, or reconsideration, of a request for review.” *Benchmark Industries*, 262 NLRB 247, 248 (1982), enfd. mem. 724 F.2d 974 (5th Cir. 1984); see also *Allstate Insurance Co.*, 234 NLRB 193 (1978).

All full-time and regular part-time registered nurse (RN) charge nurses and licensed practical nurse (LPN) charge nurses employed by the Respondent at its West Hartford, Connecticut facility; but excluding all clerical and casual employees, the administrator, assistant administrator, director of nursing, assistant director of nursing, infection control nurse, staff development nurse, adult day care coordinator, wellness coordinator, clinical coordinator, MDS coordinators, shift supervisors and relief shift supervisors, and guards, other professional employees and other supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated September 3, 2008, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about September 3, 2008, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about September 3, 2008, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Saint Mary Home, West Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Teamsters Local 761 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time registered nurse (RN) charge nurses and licensed practical nurse (LPN) charge nurses employed by the Respondent at its West Hartford, Connecticut facility; but excluding all clerical and casual employees, the administrator, assistant administrator, director of nursing, assistant director of nursing, infection control nurse, staff development nurse, adult day care coordinator, wellness coordinator, clinical coordinator, MDS coordinators, shift supervisors and relief shift supervisors, and guards, other professional employees and other supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in West Hartford, Connecticut, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 3, 2008.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 28, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Teamsters Local 671 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time registered nurse (RN) charge nurses and licensed practical nurse (LPN) charge nurses employed by us at our West Hartford, Connecticut facility; but excluding all clerical and casual employees, the administrator, assistant administrator, director of nursing, assistant director of nursing, infection control nurse, staff development nurse, adult day care coordinator, wellness coordinator, clinical coordinator, MDS coordinators, shift supervisors and relief shift supervisors, and guards, other professional employees and other supervisors as defined in the Act.

SAINT MARY HOME